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(Additional counsel listed on signature  
pages)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

UMG RECORDINGS, INC, CAPITOL  
RECORDS, LLC, CONCORD BICYCLE  
ASSETS, LLC, CMGI RECORDED  
MUSIC ASSETS LLC, SONY MUSIC  
ENTERTAINMENT, and ARISTA MUSIC

Plaintiff(s),

vs.

INTERNET ARCHIVE, BREWSTER  
KAHLE, KAHLE/AUSTIN  
FOUNDATION, GEORGE BLOOD, and  
GEORGE BLOOD, L.P.

Defendant(s).

Case No. 3:23-cv-06522-MMC

**STIPULATED AND ~~PROPOSED~~  
ORDER RE: DISCOVERY OF  
ELECTRONICALLY STORED  
INFORMATION**

1           **1. PURPOSE**

2           This Order will govern discovery of electronically stored information (“ESI”) in this  
3 case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the  
4 Discovery of Electronically Stored Information, and any other applicable orders and rules.

5           **2. COOPERATION**

6           The parties are aware of the importance the Court places on cooperation and commit to  
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the  
8 Discovery of ESI.

9           **3. PRESERVATION**

10          The parties have discussed their preservation obligations and needs and agree that  
11 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the  
12 costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- 13           a) Only ESI created or received between September 1, 2016 and the present will be  
14           preserved;
- 15           b) The parties have exchanged/will exchange a list of the types of ESI they believe  
16           should be preserved and the custodians, or general job titles or descriptions of  
17           custodians, for whom they believe ESI should be preserved, e.g., “HR head,”  
18           “scientist,” and “marketing manager.” The parties shall add or remove custodians  
19           as reasonably necessary;
- 20           c) The parties have agreed/will agree on the number of custodians per party for whom  
21           ESI will be preserved;
- 22           d) These data sources are not reasonably accessible because of undue burden or cost  
23           pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be  
24           preserved but not searched, reviewed, or produced: backup media, systems no  
25           longer in use that cannot be accessed;
- 26           e) Among the sources of data the parties agree are not reasonably accessible, the  
27           parties agree not to preserve the following: backup media and systems that are no  
28           longer in use and that cannot be accessed.

- 1 f) In addition to the agreements above, the parties will identify as necessary additional  
2 sources of data that (a) could contain relevant information but (b) under the  
3 proportionality factors, should not be preserved.

#### 4 **4. SEARCH**

5 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if  
6 appropriate, they will meet and confer about methods to search ESI in order to identify ESI  
7 that is subject to production in discovery and filter out ESI that is not subject to discovery.

#### 8 **5. PRODUCTION FORMATS**

##### 9 **A. Scope**

10 The parties will endeavor to produce documents and ESI consistent with the production  
11 format requirements below to the extent practicable. The parties recognize, however, that strict  
12 adherence to those requirements may not be possible in all situations and with all data. The  
13 parties will meet and confer regarding any potential material deviations from this ESI Order.

##### 14 **B. Paper Records**

15 Paper records will be scanned or otherwise converted into electronic form from paper  
16 documents in the following format:

- 17 (1) TIFFs. All documents shall be scanned to single page Group 4, TIFF format, at  
18 least 300 dpi and 8 ½ x 11-inch page size, except for documents requiring higher  
19 resolution or different page size. Each image file should have a unique file name  
20 which shall be the Bates number of the page.
- 21 (2) In scanning paper documents, distinct documents should not be merged into a  
22 single record, and single documents should not be split into multiple records (i.e.,  
23 paper documents should be logically unitized). The parties will make their best  
24 efforts to have their vendors unitize documents correctly and will commit to address  
25 situations where there are improperly unitized documents.
- 26 (3) Objective Coding Fields. The following objective coding fields should be  
27 provided, if applicable and/or available: (1) beginning Bates number; (2) ending  
28

1 Bates number; (3) beginning attachment Bates number; (4) ending attachment Bates  
2 number; (5) page count; and (6) source location/custodian.

3 **C. Electronically Stored Information**

4 The parties will produce ESI in TIFF format according to the following specifications:

5 (1) All TIFF formatted documents will be single page, Group 4 TIFF at 300 X 300 dpi  
6 resolution and 8½ X 11-inch page size, except for documents requiring different  
7 resolution or page size.

8 (2) An image load file, in standard Opticon format, showing the Bates number of each  
9 page and the appropriate unitization of the documents, will accompany all  
10 document images.

11 (3) Each imaged version of an electronic document will be created directly from the  
12 original electronic document.

13 (4) Color documents (e.g., color photographs or graphical representations in color)  
14 shall be produced as black & white, single-page TIFF images in accordance with  
15 the technical specifications set out above, unless agreed with the opposing party or  
16 ordered by a court. The requesting party retains the right to request TIFF images in  
17 higher resolution or larger page sizes if necessary to render the image legible or  
18 understandable. If color images are required to render the document legible and  
19 usable, the files shall be delivered in single page, JPEG format.

20 (5) Full extracted text will be provided in the format of a single \*.txt file for each file  
21 (e.g., not one \*.txt per \*.tif image). Where ESI contains text that has been redacted  
22 under assertion of privilege or other protection from disclosure, the redacted \*.tif  
23 image will be run through optical character recognition (“OCR”) and file-level  
24 OCR text will be produced in lieu of extracted text. Searchable text will be  
25 produced as file-level multi-page UTF-8 text files with the text file named to match  
26  
27  
28

1 the beginning production number of the file. The full path of the text file must be  
2 provided in the \*.dat data load file.

3 (6) There will be two Load/Unitization files accompanying all productions. One will  
4 be the image load file and the other will be the metadata load file.

5 (a) **Image Load File.**

6 (i) Every document referenced in the product load file shall have all  
7 corresponding images, text, and data logically grouped together in  
8 a directory structure with a common key to properly load the data.

9 (ii) Documents shall be produced in only one image load file  
10 throughout the productions, unless that document is noted as being  
11 a replacement document in the Replacement field of the data load  
12 file.

13 (iii) The name of the image load file shall mirror the name of the  
14 delivery volume, and should have a lfp., opt, or .dii<sup>1</sup> extension  
15 (e.g., ABC001.lfp). The volume names shall be consecutive (i.e.,  
16 ABC001, ABC002, et. seq.)

17 (iv) The load file shall contain one row per TIFF image.

18 (v) Every image in the delivery volume shall be contained in the  
19 image load file.

20 (vi) The image key shall be named the same as the Bates number of  
21 the page. Load files shall not span across media (e.g., CDs, DVDs,  
22 Hard Drives, etc.). A separate volume shall be created for each  
23 piece of media delivered.

24 (vii) E-mails will be produced with the CC and BCC line displayed in  
25 the image.

26  
27  
28 <sup>1</sup> If dii file is produced, the accompanying metadata load file shall be separate from the .dii file  
and not contained within the .dii file.

(b) **Metadata Load File.** The following metadata fields associated with each electronic document, to the extent they are available, and to the extent each metadata field label can be customized, will be produced.

Field Name	Field Description	Required for E-mail	Required for Non-E-mail ESI
CustodiansAll	Name of all custodian(s) of e-mail(s) or file(s) produced (Last Name, First Name format) as available	x	x
BegBates	Beginning Bates number (including Prefix)	x	x
EndBates	Ending Bates number (including Prefix)	x	x
BegAttach	Beginning Bates number of the first document in an attachment range (only in e-mails with attachments)	x	
EndAttach	Ending Bates number of the last document in attachment range (only in e-mails with attachments)	x	
AttachCount	Number of attachments to an e-mail	x	
AttachRange	Bates range beginning with BatesBeg and ending with BatesEndAttach	x	
ParentBates	Beginning Bates number for the parent e-mail of a family (will not be populated for documents that are not part of a family)	x	
From	From field extracted from an e-mail message	x	
Author	Author field extracted from the metadata of a non-e-mail document		x
To	To or Recipient field extracted from an e-mail message	x	

Field Name	Field Description	Required for E-mail	Required for Non-E-mail ESI
Cc	Carbon Copy (“Cc”) field extracted from an e-mail message	x	
Bcc	Blind Carbon Copy (“Bcc”) field extracted from an e-mail message	x	
E-mailSubject	Subject line extracted from an e-mail message	x	
Filename	File name — Original name of file as appeared in original location		x
Title	Title field extracted from the metadata of a non-e-mail document		x
DateSent	Sent date of an e-mail message (mm/dd/yyyy format) (a given e-mail will have either a DateSent or Date Recvd, but not both)	x	
DateRcvd	Received date of an e-mail message (mm/dd/yyyy format) (a given e-mail will have either a DateSent or Date Recvd, but not both)	x	
DateCreated	Date that a non-e-mail file was created (mm/dd/yyyy format)		x
DateLastmodified	The application recorded time on which the document was last modified		x
TimeSent	Time e-mail was sent (hh:mm:ss format) (a given e-mail will have either a TimeSent or Time Recvd, but not both)	x	
TimeRcvd	Time e-mail was received (hh:mm:ss format) (a given e-mail will have either a TimeSent or Time Recvd, but not both)	x	
TimeZone	The time zone the document was processed in.	x	

Field Name	Field Description	Required for E-mail	Required for Non-E-mail ESI
FilePath	File path storage location of the document or e-mail if the source application allows for the creation of folders	x	x
NativeLink (if natives are exchanged)	Relative path to any files produced in native format	x	x
TextLink (if text is exchanged)	Relative path to any OCR/extracted text files in the production set	x	x
ConfidentialityDesignation	Confidentiality Designation	x	x
Redacted	Descriptor for documents that have been redacted. "Yes" for redacted documents; "No" for unredacted documents.	x	x
HashValue	MD5 or SHA-1 hash value used to deduplicate the data	x	x
FileExtension	File extension of native file	x	x
PageCount	Total number of pages for a document. Slipsheets will indicate one (1) page.	x	x
RecordType	The record type indicating whether the document is an email, email attachment, email attachment (email) [for attachments that are emails], E-Doc, or E-Doc Attachment, Hard Copy, or similar designations.	x	x

### (7) Native Files

- (a) Any document that cannot be converted to TIFF, and any document that would become illegible or unusable when converted to TIFF, must be produced in native format. The parties agree that the following documents will be provided in native form: spreadsheets (for example, .XLS, .XLSX); media files (for example, .MP4, .WAV, .MPG, .AVI, .MOV, .WMV, .MPEG etc.). The parties will meet and confer regarding any



1 good-faith request for the production of PowerPoint files or source code  
2 in native file format.

3 (b) Any document produced in native format will be produced according to  
4 the following specifications, to the extent practical and available:

5 (i) A unique document number and confidentiality designation shall  
6 be used as the file name. The original file name and extension  
7 shall be preserved in the corresponding load file. An example of  
8 this convention would be: "CH00000001\_HighlyConfidential"  
9 with metadata in the load file listing the original filename and  
10 extension as "Copyright data.xlsx."

11 (ii) The native format documents shall be accompanied by reference  
12 information that sets forth for each document sufficient  
13 information to allow the parties to track and authenticate the native  
14 format documents produced, including: (i) the name of the  
15 custodian from whose files the electronic file is produced; (ii) an  
16 appropriately calculated "MD-5 Hash Value;" (iii) the original  
17 name of the file; and (iv) a document control number.

18 (iii) Documents produced in native format shall be produced with  
19 TIFF placeholders, branded with the document's Bates number  
20 and any confidentiality designation, displaying text stating that  
21 "This File Was Produced in Native Format Only."

22 (iv) To the extent the protocols in paragraphs C.7.(b)(i)-(iii) are  
23 impractical or commercially unreasonable for large volumes of  
24 native media files, they are excused so long as such files are  
25 produced in native format and are reasonably identifiable.

#### 26 **D. Security**

27 The parties will make reasonable efforts to ensure that any productions made are free  
28 from viruses and provided on encrypted media or by secure file transfer protocol ("FTP"). To

1 maximize the security of information in transit, any media on which documents are produced  
2 may be encrypted. In such cases, the producing party shall transmit the encryption key or  
3 password to the requesting party, under separate cover, contemporaneously sending the  
4 encrypted media.

5 **E. Redacted Files**

6 Extracted text will *not* be provided for electronic documents that have been redacted—  
7 *e.g.*, for privilege or trade secrets—because the extracted text would reveal the redacted  
8 information. Instead, these files should be run through an OCR process to capture the visible  
9 text only and the results exchanged in lieu of the original extracted text.

10 **F. Data Load Files/Cross-Reference Files**

11 Fielded data should be exchanged via a document-level-database load file in one of two  
12 delimited formats: either standard Concordance (DAT) or comma delimited (CSV). All image  
13 data should be delivered with a corresponding image load file in one of three formats: standard  
14 IPro (LFP), Opticon (OPT) or Summation (DII). The total number of images files referenced in  
15 the image load file should match the total number of images in the production delivery.

16 **G. Deduping Documents and Most Inclusive E-mail Productions**

17 The parties may dedupe globally (*i.e.*, across all custodians). This will result in the  
18 producing party needing to produce only a single copy of responsive duplicate ESI. The parties  
19 shall make a good faith effort to de-duplicate stand-alone documents against stand-alone  
20 documents and shall de-duplicate top-level e-mail documents against top-level e-mail  
21 documents. De-duplication shall not break apart families. All Blind Copyees (BCC) recipient  
22 names that would have been provided in the BCC metadata field but are now excluded because  
23 of de-duplication must be identified in the BCC metadata field.

24 E-mail threads are e-mail communications that contain prior or lesser-included e-mail  
25 communications that also may exist separately in the party's electronic files. A most inclusive  
26 e-mail thread is one that contains all the prior or lesser-included e-mails, including attachments,  
27 for that branch of the e-mail thread. The parties agree that removal of wholly included, prior-  
28 in-time, or lesser-included versions from potential production will reduce all parties' costs of

document review, production, and litigation-support hosting. For the avoidance of doubt, only e-mail messages for which the parent document and all attachments are contained in the more inclusive e-mail message will be considered less inclusive e-mail messages that need not be produced; if the later message contains different text (such as where the later message adds in-line comments to the body of the earlier message), or does not include an attachment that was part of the earlier message, the earlier message must be produced.

#### **H. Non-Custodial Repositories & Business Records Management**

Documents and categories of documents that are relevant to this action and responsive to a party's document requests, and that are regularly maintained in a known location, or in a location that is knowable upon reasonable inquiry of those with knowledge about a party's document management, may be collected and reviewed for responsiveness and privilege without the use of search terms or other agreed-upon advanced search methodology (e.g., analytics, predictive coding, technology-assisted-review).

#### **I. Predictive Coding / Technology-Assisted Review**

A party using predictive coding/technology-assisted review for the purpose of culling the documents to be reviewed or produced shall notify the opposing party prior to the use of such technologies. If another party raises concerns regarding the use of such technologies in response to such notice, the noticing party shall provide reasonable information relating to the appropriateness of the use of such technologies, and the parties shall meet and confer in an attempt to resolve such concerns on a mutually agreeable basis.

#### **J. ESI Not Reasonably Accessible**

If a producing party contends that any relevant ESI is not reasonably accessible within the meaning of Fed. R. Civ. P. 26(b)(2)(B), that party shall timely identify such ESI with reasonable particularity and shall provide the receiving party with the basis for declining to produce such ESI, including but not limited to information about the nature of any limitations on access, the likely costs that might be incurred in producing such ESI, the method used for storage of such ESI (e.g., the type of system used to store the ESI) and the location of such ESI. The parties shall negotiate in good faith concerning the production of any such ESI. The data

1 sources not reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P.  
 2 26(b)(2)(B) will be preserved but not searched, reviewed, or produced until if/when the parties  
 3 reach an agreement.

4 Notwithstanding the foregoing, except upon a showing of good cause, the following data  
 5 sources and document types are not discoverable in this litigation, and the parties shall have no  
 6 obligation to preserve data contained in the following forms:

- 7 (1) Back-up tapes, cold or offline storage, or other long-term storage media, including  
 8 any tapes or storage system that was created strictly for use as a data back-up or  
 9 disaster recovery medium.
- 10 (2) Temporary data stored in a computer's random access memory (RAM), or other  
 11 operating system files.
- 12 (3) Deleted, fragmented, unallocated space or other data only accessible by forensics.
- 13 (4) On-line access data such as temporary Internet files, history, cache, cookies, and the  
 14 like.
- 15 (5) Server, system, or network logs.
- 16 (6) Data remaining from systems no longer in use that is unintelligible on systems in use.
- 17 (7) Ephemeral data automatically deleted by its nature or design by the application,  
 18 settings, or operating systems.

## 19 **6. PHASING**

20 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties  
 21 agree to meet and confer regarding whether phasing the production of responsive ESI will  
 22 promote efficiencies and, if so, production of which sources and custodians should be  
 23 prioritized.

## 24 **7. DOCUMENTS PROTECTED FROM DISCOVERY**

- 25 a. Communications between a party and counsel of record in this litigation do not  
 26 need to be included on a privilege log.
- 27 b. Privileged communications, or protected work product, created on or after the  
 28 commencement of this action do not need to be included on a privilege log.

- 1 c. Prior to serving privilege logs, the parties will confer concerning the appropriate  
2 format for privilege logs, including whether identifying communications by  
3 category rather than individually is appropriate, and will memorialize in writing  
4 any such agreement they reach.

5 **8. MODIFICATION**

6 This Stipulated Order may be modified by a Stipulated Order of the parties or by the  
7 Court for good cause shown.

8 **9. MISCELLANEOUS**

- 9 a. Nothing herein shall be construed to affect the admissibility of documents and ESI.  
10 All objections to the discoverability or admissibility of any documents and ESI are  
11 preserved and may be asserted at any time.
- 12 b. Nothing herein shall affect, in any way, a producing party's right to seek  
13 reimbursement for costs associated with collection, review, and/or production of  
14 documents in response to disproportionate ESI production requests, pursuant to  
15 Federal Rule of Civil Procedure 26.
- 16 c. Nothing herein is intended to prevent either party from complying with the  
17 requirements of any applicable country's data privacy laws. The parties agree to  
18 meet and confer before including custodians or data sources subject to such laws in  
19 any ESI or other discovery requests.
- 20 d. The parties will meet and confer regarding any potential deviations from this ESI  
21 order. The parties will endeavor to produce documents and data in a reasonably  
22 timely manner and in accordance with the timelines set forth in the Federal Rules of  
23 Civil Procedure. The parties recognize, however, that strict adherence to those  
24 requirements may not be possible in all situations and with all data. The parties  
25 anticipate producing documents and data on a rolling basis with the parties making  
26 reasonable efforts to expedite production. If either party feels production has been  
27 unreasonably delayed, the parties will confer to attempt to reach a mutually  
28 agreeable resolution before seeking court involvement.

IT IS SO STIPULATED, through Counsel of Record.

Dated: June 20, 2024

/s/ Corey Miller

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*Attorneys for Defendants Internet Archive, Brewster Kahle, Kahle/Austin Foundation, George Blood, and George Blood L.P.*

**ATTESTATION**

Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I hereby attest that concurrence in the filing of this document has been obtained from all of the signatories above.

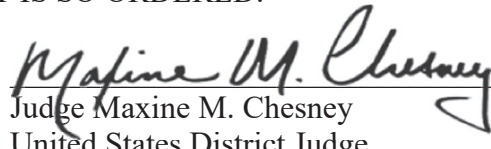
Dated: June 20, 2024

/s/ Corey Miller  
Corey Miller

\* \* \*

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 20, 2024

  
\_\_\_\_\_  
Judge Maxine M. Chesney  
United States District Judge